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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,414	05/25/2001	Fred Discenzo	01AB121	6236

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William R. Walbrun
Rockwell Automation (Allen-Bradley Co., Inc.)
1201 South Second Street
Milwaukee, WI 53204

EXAMINER

PEREZ DAPLE, AARON C

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/866,414

Applicant(s)

DISCENZO ET AL.

Examiner

Aaron C Perez-Daple

Art Unit

2154

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED**FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.**

Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): see note below.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NoneClaim(s) objected to: NoneClaim(s) rejected: 1-37, 41-43, 45-49 and 53-55.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See note below.

Note: Objection to the drawings is hereby withdrawn in view of Applicant's Remarks filed 9/7/04, which are found persuasive.

Objection to the specification is hereby withdrawn in view of Applicant's Remarks filed 9/7/04, which are found persuasive.

The rejection of claims 42 and 54 under 35 U.S.C. 112, first paragraph, is hereby withdrawn in view of Applicant's Remarks filed 9/7/04, which are found persuasive.

Applicant's arguments filed 9/7/04 with respect to claims 1-7, 10, 11, 15, 31-34, 36, 37, 41-43, 45-47, 49 and 53-55 are not persuasive. Irrespective of whether it is sufficient to recite the limitation of "a diagnostics and control system" in the preamble only, the Examiner finds that Hays et al. (US 6,260,004 B1) (hereinafter Hays) clearly discloses just such an integrated diagnostics and control system. This is evident from the abstract and previously cited Fig. 4a. As further evidence, previously cited col. 6, lines 27-31, recites, "The system may also be used to diagnose change in the operating condition of a system for purposes of diagnosing maintenance and/or diagnosing change in the operation and control of the system." Therefore, the claims are properly rejected under 35 U.S.C. 102 (e) as anticipated by Hays.

Since Hays teaches all the features of claims 1 and 41, the rejections of dependent claims 8, 9, 12-14, 16-19, 20-30, 35 and 48 under 35 U.S.C. 103(a) are properly maintained for the same reasons as claims 1 and 41 above.